

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

Case No. 1:18-op-45459-DAP

THE MUSCOGEE (CREEK) NATION,

PLAINTIFF,

v.

PURDUE PHARMA L.P., *et al.*,

DEFENDANTS.

MDL No. 2804

**Master Docket No.:
1:17-MD-02804-DAP**

Hon. Judge Dan A. Polster

JURY TRIAL DEMANDED

**MOTION TO SUBSTITUTE OPERATING ENTITIES AMNEAL PHARMACEUTICALS
LLC AND AMNEAL PHARMACEUTICALS OF NEW YORK, LLC
IN PLACE OF HOLDING COMPANY AMNEAL PHARMACEUTICALS, INC.**

Pursuant to Federal Rule of Civil Procedure 21, Plaintiff in the above-captioned case hereby moves (1) to add Amneal Pharmaceuticals LLC and Amneal Pharmaceuticals of New York, LLC (collectively, the “Amneal Operating Entities”) as Defendants in this case in place of Amneal Pharmaceuticals, Inc. (the “Amneal Holding Company”), and (2) provided that the Amneal Operating Entities are added, to dismiss the Amneal Holding Company without prejudice.

BACKGROUND

On July 9, 2018, the Muscogee (Creek) Nation (the “Nation”) filed an amended complaint in which it named the Amneal Holding Company as a Defendant. On August 31, 2018, the Amneal Holding Company moved to dismiss for lack of personal jurisdiction, arguing that it is a holding company and has not manufactured, sold, promoted, or supplied any prescription medications, including prescription opioid medications. *See* Mot. to Dismiss Pl.’s First Am. Compl. 2, ECF No.

50 (“Amneal’s Motion to Dismiss”).¹ If this motion is granted, Amneal’s Motion to Dismiss will be moot. It is Plaintiff’s understanding that the Amneal Operating Entities manufacture, sell, promote, or supply prescription medications, including prescription opioid medications, including in Oklahoma, where the Nation is located, and are therefore subject to the Court’s jurisdiction. Plaintiff further understands that the Amneal Holding Company and the Amneal Operating Entities are all represented by the same counsel (“Counsel for Amneal”), and that the Amneal Operating Entities are aware of the basis for the Nation’s claims.

In an effort to resolve Amneal’s Motion to Dismiss without involving the Court, the Nation sought consent from Counsel for Amneal to substitute the Amneal Operating Entities in place of the Amneal Holding Company. Counsel for Amneal withheld consent.

The Nation therefore now files this procedural motion seeking to substitute the Amneal Operating Entities, which were inadvertently omitted from the Nation’s complaint, for the Amneal Holding Company, which was inadvertently included in the Nation’s complaint. It is Plaintiff’s intent that this motion be without prejudice to any defenses, counterclaims, cross-claims, arguments, or other legal positions available to the Amneal Operating Entities

ARGUMENT

Rule 21 provides: “On motion or on its own, the court may any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. It is appropriate to add a party when that party has knowledge of the lawsuit and will not be required to expend significant resources to defend itself, particularly where the proposed party will merely join other pleadings. *See Commerce Benefits Grp., Inc. v. McKesson Corp.*, No. 1:07-CV-2036, 2008 WL 239550, at *4 (N.D. Ohio Jan. 28, 2008) (finding that “[t]he just and speedy resolution of this lawsuit will be enhanced by the addition of . . . a third

¹ Amneal also moved to dismiss based on a purported lack of service. The Nation has responded to both arguments in the Consolidated Opposition to Motions to Dismiss being filed September 28, 2018.

party defendant and will not create additional expense or prejudice towards the parties”); *see also Morataya v. Metro RTA*, No. 5:17-CV-1133, 2017 WL 5495123, at *2 (N.D. Ohio Nov. 16, 2017) (granting motion to add additional party defendants even though “some additional discovery and an adjustment of the dates and deadlines may be necessary”).

Plaintiffs in related proceedings routinely have used Rule 21 to substitute operating entities for holding companies, consistently with defendants’ consent. *See, e.g., In re: National Prescription Opiate Litigation*, Case No. 1:17-md-2804 (N.D. Ohio), ECF Nos. 637, 705, 706, 708, 709, 712, 763, 764, 793.

Here, the Amneal Operating Entities will be able to join defenses already raised by the Amneal Holding Company and other Defendants. And, to the extent the Amneal Operating Entities will rely on unique defenses not already raised by the Amneal Holding Company and other Defendants, they are not prejudiced because no Answers to the Complaint have been filed. At this stage of the litigation and under these circumstances, the requested substitution constitutes “just terms” under Rule 21. Additionally, as explained in the Nation’s Consolidated Opposition to Motions to Dismiss being filed September 28, 2018, substitution is a more appropriate and efficient avenue for resolving this dispute than dismissal, which would merely result in the Nation filing a separate lawsuit, because substitution reaches the same result while also “conserve[ing] judicial resources, reduc[ing] duplicative service, . . . and promot[ing] the just and efficient conduct of [the National Prescription Opiate Litigation].” *See* Case Management Order One § 1.a, *In re: National Prescription Opiate Litigation*, Case No. 1:17-md-2804 (N.D. Ohio), ECF No. 232.

CONCLUSION

Wherefore, Plaintiff respectfully requests that the Court (1) add Amneal Pharmaceuticals LLC and Amneal Pharmaceuticals of New York, LLC as Defendants in this case in place of Amneal Pharmaceuticals, Inc., and (2) dismiss Amneal Pharmaceuticals, Inc. without prejudice.

Date: September 28, 2018

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CERTIFICATE OF SERVICE

I, Jenna A. Hudson, hereby certify that on September 28, 2018 the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Jenna A. Hudson
Jenna A. Hudson

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**ORDER GRANTING PLAINTIFF'S
MOTION TO SUBSTITUTE OPERATING
ENTITIES AMNEAL
PHARMACEUTICALS LLC AND
AMNEAL PHARMACEUTICALS OF
NEW YORK, LLC IN PLACE OF
HOLDING COMPANY AMNEAL
PHARMACEUTICALS, INC.**

Plaintiff Muscogee Creek Nation moves for leave to file a motion to (1) add Amneal Pharmaceuticals LLC and Amneal Pharmaceuticals of New York, LLC (collectively, the “Amneal Operating Entities”) as Defendants in this case in place of Amneal Pharmaceuticals, Inc. (the “Amneal Holding Company”), and (2) provided that the Amneal Operating Entities are added, dismiss the Amneal Holding Company without prejudice.

The Court finds that the terms substituting the Amneal Operating Entities as Defendants in place of the Amneal Holding Company are just within the meaning of Rule 21.

Plaintiff's Motion for Leave to File Motion Substituting Amneal Defendants is hereby GRANTED.

IT IS SO ORDERED.

Dated: _____

HON. DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE